

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTHONY DUANE ROPER,

Petitioner,

Case No. 1:06-CV-754

v.

HON. GORDON J. QUIST

JOHN PRELESNIK,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court has before it Petitioner's objections to the Magistrate Judge's Report and Recommendation issued on November 13, 2006, in which the magistrate judge recommended that the Court deny Petitioner's habeas claim because it is barred by the one year statute of limitations for filing a habeas corpus claim. After conducting a *de novo* review of the report and recommendation, the Court concludes that the report and recommendation should be adopted by the Court.

Petitioner does not object to the magistrate judge's conclusion that the petition was barred by the one year statute of limitations, but requests equitable tolling of the statute of limitations for filing a habeas corpus action. The Supreme Court has indicated that a petitioner seeking equitable tolling of this statute of limitations has the burden of establishing two elements: "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way." *Pace v. DiGuglielmo*, 544 U.S. 408, 418, 125 S. Ct. 1807, 1814 (2005) (applying standard set forth in *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96, 111 S. Ct. 453, 457-58 (1990)). Petitioner asks

the Court to consider his lack of training in the law and his “in depth studying of Law (this past year)” as factors weighing in favor of equitable tolling. However, as noted by the magistrate judge, the fact that Petitioner is untrained in the law, was proceeding without a lawyer, or may have been unaware of the statute of limitations does not warrant equitable tolling. *See Allen v. Yukins*, 366 F.3d 396, 403 (6th Cir. 2004); *Rose v. Dale*, 945 F.2d 1331, 1335 (6th Cir. 1991). Therefore,

IT IS HEREBY ORDERED that the Magistrate Judge’s Report and Recommendation issued on November 13, 2006 (docket no. 3), is **APPROVED AND ADOPTED** as the Opinion of this Court.

IT IS FURTHER ORDERED that Petitioner’s petition for writ of habeas corpus is **DENIED**.

The case is **concluded**.

Dated: August 16, 2007

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE